

## Message Text

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ACTION L-03

INFO OCT-01 ARA-11 ADP-00 JUSE-00 CPR-02 M-03 A-01 CIAE-00

INR-10 NSAE-00 RSC-01 SSO-00 INRE-00 SCA-01 DODE-00

SS-15 NSC-10 AID-20 IGA-02 RSR-01 /081 W  
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FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC IMMEDIATE 7671

INFO USCINCSO

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E. O. 11652: NA

TAGS PFOR CO

SUBJECT: NOVOA LAWSUIT AGAINST IAGS

FOR OFFICE OF LEGAL ADVISOR

DEPARTMENT PASS TO HQDA ( DAJA- LTP)

USARSO FOR SJA CAPTAIN BRUBAKER

REF: STATE 101384, BOGOTA 3581, 3589 BOGOTA A-110

BEGIN SUMMARY: NOVOA AND HIS LAWYER APPEARED AT THE IAGS ON MAY 25 WITH AN ORDER TO SEIZE SEVERAL IAGS VEHICLES. THEY WERE ACCOMPANIED BY TWO POLICE AGENTS. U. S. OFFICIALS SUCCESSFULLY BLOCKED THE SEIZURE. THE FOREIGN MINISTRY HAS ADVISED US THAT WE MUST APPEAR IN COURT TO CLAIM IMMUNITY. ACTION REQUESTED: THAT WASHINGTON CONSIDER GIVING US AUTHORITY TO RETAIN A LOCAL ATTORNEY. END SUMMARY

1. ON MAY 25, MR. NOVOA AND HIS LAWYER AND TWO POLICE AGENTS ATTEMPTED TO SIEZE VEHICLES BELONGING TO THE IAGS. IN THE FACE OF PROTESTS BY THE IAGS DIRECTOR, EMBASSY POLITICAL COUNSELOR AND AN AID LAWYER, NOVOA'S LAWYER AGREED TO A POSTPONEMENT OF THE SEIZURE IN ORDER FOR FURTHER LEGAL AND DIPLOMATIC CONSULTATIONS. THE POLICE  
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AGENTS, IN THE EVENT, REFUSED TO TAKE THE VEHICLES INTO CUSTODY AND BASED THEIR REFUSAL ON THE FACT THE VEHICLES WERE AT THE TIME ON COLOMBIAN GOVERNMENT PROPERTY. THE SEIZURE ORDER WAS SIGNED BY THE JUDGE OF THE 4 TH LABOR COURT ON MAY 18. THE DEPARTMENT WILL RECALL THAT THE JUDGMENT WAS ISSUED BY THE 2 ND LABOR COURT; NEVERTHELESS ONCE A JUDGMENT IS ISSUED, ANY COURT MAY ISSUE AN ORDER OF EXECUTION.

2. THE SEIZURE ORDER AUTHORIZED CONFISCATION OF APPROXIMATELY SEVEN VEHICLES ( THE POLICE AGENT WOULD NOT ALLOW COLONEL RUTTER TO MAKE A COPY OF THE ORDER). THESE WERE ADMINISTRATIVE VEHICLES, WITH A HIGH RESALE VALUE, RATHER THAN FIELD VEHICLES. THERE ARE COURT ORDERS AUTHORIZING THE ATTACHEMENT AND SEIZURE OF FIVE MORE VEHICLES, ALL FURNITURE AND EQUIPMENT BELONGING TO DMA/ IAGS, BANK ACCOUNTS AND MONEY OWED TO DMA/ IAGS BY THE COLOMBIAN GEOGRAPHIC INSTITUTE.

3. NO PROPERTY HAS BEEN REMOVED FROM DMA/ IAGS PROPERTY BUT IS SUBJECT TO PHYSICAL REMOVAL AT ANY TIME. FOURTH CIRCUIT LABOR JUDGE HAS INDICATED HE CAN AND WILL ORDER PHYSICAL REMOVAL.

4. AID COLOMBIAN ATTORNEY BOCANEGRA INFORMS US THAT THERE IS NO DEFENSE AGAINST THE JUDGMENT ON THE MERITS: THERE ARE NO NORMAL APPEAL REMEDIES AVAILABLE AT THIS TIME, AND THERE ARE NO PROVISIONS FOR A STAY OF EXECUTION EXCEPT THROUGH THE DEPOSIT OF FUNDS EQUAL TO THE AMOUNT OF JUDGMENT. IN THIS CASE THE AMOUNT IS 320,000 COLOMBIAN PESOS ( ONE PESO EQUALS APPROXIMATELY U. S. \$.043). IN ADDITION NOVOA' S CLAIM TO RETIREMENT WHICH COULD AMOUNT TO ABOUT U. S. \$40,000, MUST BE RESOLVED.

5. THE COLOMBIAN FOREIGN OFFICE INDICATES THERE IS NOTHING THEY CAN NOW DO TO PREVENT THE TAKING OF U. S. GOVERNMENT PROPERTY AND HAVE COUNSELED US TO HIRE AN ATTORNEY AND GO INTO COURT TO CLAIM DIPLOMATIC IMMUNITY FOR IAGS. THE FOREIGN OFFICE LEGAL ADVISOR SANCHEZ

HAS TOLD US THAT BY SO DOING IAGS DOES NOT SUBMIT TO THE JURISDICTION OF THE COURT. CAPTAIN BRUBAKER OF SJA PANAMA STAFF AND AID LAWYER STACK ARE NOT CONVINCED THAT SANCHEZ IS CORRECT.

6. A SOLUTION THROUGH DIPLOMATIC CHANNELS APPEARS UNLIKELY AT THIS TIME.

7. THERE APPEAR TO BE TWO ALTERNATIVES: A) SETTLE THE CLAIM; THIS LIMITED OFFICIAL USE

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WOULD SET A PRECEDENT FOR OTHER CASES IN COLOMBIA AND SOUTH AMERICA:  
B) HIRE A LOCAL ATTORNEY TO FILE FORMAL ALLEGATIONS OF IMMUNITY AND LACK OF JURISDICTION WITH THE FOURTH LABOR COURT AND REMOVE THE CASE TO A HIGHER COURT IF POSSIBLE. IN ORDER TO STOP REMOVAL OF THE PROPERTY FUNDS MAY BE DEPOSITED AS PER PARAGRAPH FOUR ABOVE.

8. ACCORDING TO BOTH DR. SANCHEZ AND DRA. BOCANEGRA THERE IS PRE-

CEDENT IN COLOMBIAN PROCEDURE FOR ALLEGING IMMUNITY IN DIPLOMATIC MATTERS WITHOUT SUBMITTING TO THE FULL JURISIDCTION OF THE COURT.

9. THE COLOMBIAN FOREIGN OFFICE PROTOCOL DIVISION HAS TOLD US THEY WILL CERTIFY THE IMMUNITY OF LTC RUTTER AND IAGS IN ORDER THAT THE IMMUNITY BE RECOGNIZED, THE FOREIGN OFFICE CERTIFICATION AND A CLAIM OF IMMUNITY MUST BE SUBMITTED TO THE FOURTH LABOR COURT TO.

IF THE COURT DENIES IMMUNITY AN APPEAL MAY BE TAKEN TO THE SUPERIOR COURT OF CUNDINAMARCA. THAT COURT HAS RECEIVED FROM THE FOREIGN OFFICE

A NOTE ASSERTING DIPLOMATIC IMMUNITY FOR IAGS.

10. AT THE CONFRONTATION MAY 25 AT IAGE, NOVOA TOLD THE POLITICAL COUNSELOR THAT HE WOULD BE WILLING TO SETTLE OUT OF COURT FOR A LESSER AMOUNT THAN HE IS NOW CLAIMING. HE DID NOT INDICATE WHAT WOULD CONSTITUTE A SATISFACTORY SETTLEMENT.

11. ALL RELEVANT DOCUMENTS WERE POUCHED TO THE DEPARTMENT BY X BOGOTA A110 OF MAY 11.

12. WE HAVE SENT NOTE TO FOREIGN MINISTRY PROTESTING IN STRONGEST TERMS EVENTS O

\*\*\* Current Handling Restrictions \*\*\* n/a

\*\*\* Current Classification \*\*\* LIMITED OFFICIAL USE

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